

submit that it is not sound nor logical to now speculate into existence a congressional intention to supplant state jurisdiction where such jurisdiction may have been, at the time of the enactment of the Natural Gas Act, not finally settled judicially or subject to some question. The assurance given the states by Congress, at the time the Natural Gas Act came into being, that state jurisdiction would not be supplanted or circumscribed should not now, in good conscience, be diluted into an assurance of state jurisdiction if, and only if, such jurisdiction was without question in 1938.

If this policy is followed in the future, the result will be gradual supplanting of state regulations by those of the Federal Commission, of this there can be no doubt. Nor can there be any doubt that in the event of a conflict in the two authorities, those of the Federal Commission would be found to be superior.

At most, under the "pressure" formula, as now adopted, the states are permitted to regulate only inside the local areas, and because the scope of the reduction in pressure is not definitely defined, it is assumed the Federal Power Commission will take unto itself all authority which can be reasonably found to exist, as the result of this decision. The states would thus retain jurisdiction to fix rates for local consumers, but little else.

Here East Ohio takes the gas upon delivery to it by the producing and transporting companies. At that

point, inside the State of Ohio, it becomes the property of the East Ohio Company. The gas has thereupon been delivered in Ohio to the consignee, who may sell it at that point or may move it on to some more convenient place in the state for delivery to its customers. In either event when it is sold to East Ohio for resale, its future sale at retail is a local activity, which if taking place at the point of delivery would without question be considered as subject to the sole regulation of state authorities. Federal regulation is allowed only because East Ohio is unable to dispose of the gas immediately, but must move it elsewhere for delivery to the ultimate consumers. It is this transportation for delivery which is made the subject of Federal control, and as being outside the scope of "facilities" for "local distribution," subject to state regulation.

We are at loss to understand how East Ohio's lines used by it to distribute this gas to consumers are determined to be "high pressure lines transporting gas to local mains" so as to be subject to Federal regulation and at the same time "the state agency establishing (such) a rate would have equivalent authority." There can be no denial of the state's power to fix rates for sale of gas to ultimate consumers, and for this purpose to exercise some supervision over the high pressure lines, but this can only be, because such lines are used in "local distribution." Lines which are "high pressure" for the purpose of Federal regulation become "local distribution" lines for the purpose of state control.

**CONCLUSION:**

It is respectfully urged that the petitions for rehearing be granted and that the decree of the United States Court of Appeals for the District of Columbia Circuit be, upon further consideration, affirmed.

Respectfully submitted,

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**CERTIFICATE OF COUNSEL.**

We, attorneys for the Arizona Corporation Commission, State of Arizona, *amicus curiae*, do hereby certify that the foregoing memorandum in support of the petitions for rehearing in this cause is presented in good faith, and not for delay.

FRED O. WILSON,  
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